

DETAILED ACTION

Status of objections and rejections

1. Applicant's response filed 05/11/2009 is entered.
2. Claims 1-27 and 33 are cancelled by the Applicant.
3. Objections to claims 28, 31-32 and 34 have been withdrawn in light of claim amendment filed in the paper of 05/11/2009.
4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
5. Rejection of claims 28-32 and 34-35 under 35 U.S.C. 112, 2nd paragraph has been withdrawn in light of claim amendment filed in the paper of 05/11/2009.
6. Rejections of claims 28-32 and 34-35 under 35 U.S.C. 112, 1st paragraph have been withdrawn in light of claim amendment filed in the paper of 05/11/2009 and examiner's amendment as set forth below.
7. Rejection of claims 28-32 and 34-35 under 35 U.S.C. 102(b) as being anticipated by Holton et al. (WIPO, WO 94/28140, Published December 8, 1994) is withdrawn in light of claim amendment and persuasive arguments filed in the paper of 05/11/2009.

EXAMINER'S AMENDMENT

8. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Xiaochun Zhu (Reg. No. 56,311) on 5/13/2009.

In the specification:

Page 1, under the title, following paragraph has been inserted:

This is a national stage application filed under 35 U.S.C. 371 from PCT/AU03/01111, filed 08/29/2003, which claims priority to AUSTRALIA 2002951088 filed 08/30/2002, and AUSTRALIA 2002952835 filed 09/16/2002.

In the claims:

Claim 28. (amended) An isolated nucleic acid molecule comprising a sequence of nucleotides encoding a flavonoid 3',5' hydroxylase (F3'5'H), said nucleotide sequence selected from the [list] group consisting of:

- (i) a nucleotide sequence encoding the amino acid sequence as set forth in SEQ ID NO: 12;
- (ii) a nucleotide sequence encoding an amino acid sequence having at least [90%] 95% [similarity] identity to the amino acid sequence as set forth in SEQ ID NO: 12 [after optimal alignment];
- (iii) the nucleotide sequence as set forth in SEQ ID NO: 11; and
- (iv) a nucleotide sequence capable of hybridizing to the [complement] complementary sequence of the nucleotide sequence as set forth in SEQ ID NO: 11

under high stringency conditions which comprise hybridization at 42°C in 50% v/v formamide, 1M NaCl, 1% w/v SDS, and 10% w/v dextran sulphate, and washings at 65°C first in 2X SSC, 1% w/v SDS and subsequently in 0.2X SSC, 1% w/v SDS[; and

(v) a nucleotide sequence having at least 80% identity to the nucleotide sequence set forth in SEQ ID NO: 11 after optimal alignment].

Claim 29. (amended) The isolated nucleic acid molecule of [C]claim 28 operably linked to a promoter.

Claim 30. (amended) The isolated nucleic acid molecule of [C]claim 29 wherein the promoter is the CaMV 35S promoter.

Claim 31. (amended) A genetic construct comprising [a] the nucleic acid molecule of any one of [C]claims 28 to 30.

Claim 32. (amended) A genetically modified plant or progeny thereof comprising the nucleic acid molecule of [C]claim 28 which is heterologous to said plant and said progeny thereof, wherein expression of said nucleic acid molecule results in an altered flower color in said plant and said progeny thereof.

Claim 34. (amended) The genetically modified plant of [C]claim 32 wherein said nucleic acid molecule is operably linked to the CaMV 35S promoter.

Claim 35. (amended) [A] The genetically modified plant according to claim 32 or claim 34, wherein the plant is a rose or a progeny thereof, and wherein said rose progeny comprises said nucleic acid molecule.

Claims 36 and 37 are cancelled.

Applicant authorized amendments to claims 28-32 and 34-35 to obviate potential issues under 35 U.S.C. 112, 2nd paragraph, 35 U.S.C. 112, 1st paragraph and claim objections. Applicant also authorized to cancel claims 36 and 37. Applicant also authorized amendment to the specification to insert priority data.

Conclusions

9. Claims 28-32 and 34-35 are allowed.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinod Kumar whose telephone number is (571) 272-4445.

The examiner can normally be reached on 8.30 a.m. to 5.00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Vinod Kumar/
Examiner, Art Unit 1638